

Huntington

MISC.

35MISC03

115

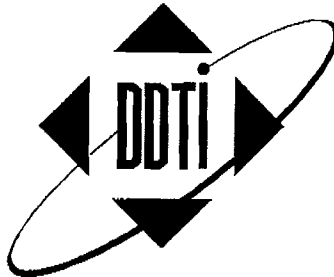
Digital Data Technologies, Inc.

P.O. Box 1947
Powell, OH 43065

or

956 King Avenue
Columbus, OH 43212

Phone (614) 429-3384
Fax (614) 429-3385
Toll Free: 1-888-800-4003
www.ddti.net



iView E9-1-1 License Agreement

Prepared for Huntington County, Indiana

October 28, 2002

SOFTWARE LICENSE AND MAINTENANCE AGREEMENT

iView E911 Edition

This Agreement is made by and between the Huntington County Commissioners, whose principal office is located at 201 N. Jefferson Street, Huntington, IN 46750 ("Client" or "Licensee") and Digital Data Technologies, Inc. (referred to as either "DDTI" or "Licensor"), an Ohio corporation, whose principal office is located at 956 King Avenue, Columbus, Ohio 43212.

1. Products and Maintenance Service

- 1.1. License: By this Agreement and License and as long as Client is in compliance with its obligations under this Agreement and License, DDTI grants to Client a non-exclusive, unlimited term, limited Client seat license to use the software, which is referred to as *iView E911 Edition*, any software DDTI develops under this Agreement to make the *iView E911 Edition* software compatible with Client's systems, and any documentation associated with the software (Documentation) for the intended use and purpose as explained below. DDTI also grants to Client a non-exclusive, unlimited term, server specific license to use DDTI's server software (Server Software) for the same purpose and in connection with its license of *iView E911 Edition* and related software. The term "DDTI Software" shall be used throughout this Agreement to refer to all or some of *iView E911 Edition*, Server Software, any software DDTI develops under this Agreement to make the *iView E911 Edition* software compatible with Client's systems, and Documentation.

Licensee may use the DDTI Software as follows: DDTI will provide Client/Licensee one CD containing the *iView E911 Edition* and Server Software to be installed by Client personnel with assistance from DDTI as described below and any Documentation on Client's PCs and on Client's server, respectively, for the sole purpose of allowing Client (and, when applicable, Client's sublicensee) to retrieve information from Client's (including the relevant telephone company) database(s) of public record information in connection with its performance of its E911 services.

The intended use of the DDTI Software is to assist a Public Safety Answering Point ("PSAP") in a statutory E911 system in order to organize and retrieve data from the PSAP's databases so that emergency services personnel, responding to a 911 call for help, can identify the location of the stationary structure or, if the PSAP is capable, the location of mobile vehicles to which assistance must be directed. The DDTI Software may be used by Client employees and by persons who are employees of any political subdivisions that are participants in the E911 system or their designees only when they are present at the PSAP and only when using the specifically licensed seat and only in connection with the services provided by the PSAP, but their use of the DDTI Software shall in no way constitute a license to those individuals or to the political subdivision whose employees or designees serve the E911 system as described herein. A more detailed description of the equipment and software provided by DDTI to Client and the number and location of the seats licensed under this Agreement appear in Exhibit A to this Agreement.

Otherwise, Client/Licensee may not share with, lease, license or sell to other political subdivisions or to any others or otherwise distribute, copy, modify, publish, display, perform or create adaptations or derivative works of the DDTI Software, unless otherwise agreed in writing, with such agreement signed by DDTI and Client. Licensee may not decompile, reverse engineer, disassemble or otherwise reduce or manipulate the DDTI Software provided under this Agreement in whole or in part, unless otherwise permitted in writing by DDTI and under the terms and conditions of such writing.

- 1.2. Client may sublicense DDTI Software to others only with the written permission of DDTI and under terms and conditions contained in a sublicense agreement between DDTI and Client.

1.3. Sublicense from Third-Party Software Vendor

Client understands that DDTI has incorporated the software of third party vendors in its software and that DDTI has received permission to sublicense such software to its clients. DDTI therefore grants Client a sublicense in the third party vendor software, which is incorporated in the DDTI Software and the use of which shall be subject to the same terms and conditions as the license from DDTI for its Software.

1.4. Maintenance Service and Updates: Client may also choose to receive DDTI's maintenance service under this Agreement by completing the appropriate sections of Exhibit A. Under this Agreement, annual maintenance service consists of twenty-four (24) hours of combined toll-free telephone and on-site support and the provision to Client of any updates of the DDTI Software that DDTI develops.

1.4.1. Technical Support: DDTI will charge according to its normal hourly rate, which is listed below for support in excess of the twenty-four hours. For purposes of maintenance service, the time for measuring on-site support begins from the time it takes a DDTI support person to leave DDTI's office to the time it takes to return to the office. In addition, Client agrees to reimburse DDTI for all reasonable travel expenses.

1.4.2. For purposes of the Maintenance Service, updates of the DDTI Software shall be provided only on the basis of a per-seat license as set forth in section 2.2 below.

2. License and Maintenance Fees

2.1. License Fee: In consideration of the rights granted by DDTI to Client in the DDTI Software provided by DDTI to Client under this Agreement, Client agrees to pay DDTI a license fee of \$2,995 per seat [the first eight (8) seats shall be provided for \$16,500 to Huntington County] for which the DDTI Software is licensed per PSAP and a \$2,995 license fee for the Server Software per server per PSAP [with the first two (2) Server Software licenses to be provided for \$0.00 to Huntington County]. The seat license fee for the first year this Agreement shall include maintenance service. Client's rights under this Agreement and DDTI's obligation to deliver the DDTI Software do not attach until all of the following have occurred: (1) that this Agreement is lawfully executed by DDTI and by all necessary Client officials following all required legal procedures to give lawful effect to this Agreement, which Client agrees to effect expeditiously; and (2) that Client timely performs all additional legal procedures and obtains all necessary legal approvals required for the continuing lawful effectiveness and enforceability of this Agreement and License. As part of the License Fee, DDTI agrees to provide to Client one business day of on-site installation assistance for Client personnel. Client may contract for additional services under the Maintenance Agreement, described herein.

2.2. Maintenance Fee: If Client chooses to subscribe to DDTI's maintenance service, Client agrees to pay DDTI for each calendar year of maintenance service a fee of \$595 per year per Client seat plus reasonable travel expenses for on-site visits by DDTI personnel to Client's location, which maintenance consists of service described above in section 1.4. Maintenance for a Client sublicensee shall be addressed in the agreement between DDTI and Client regarding sublicensees that is mentioned in section 1.2 of this Agreement. Client may request and receive maintenance service that exceeds twenty-four hours at a rate of \$100 per hour per DDTI employee for each hour after Client's use of twenty-four hours in any year term of the maintenance portion of this Agreement, plus reasonable travel expenses if Client requests or requires on-site assistance. Updates are included in the maintenance service without additional charge to Client, except as provided in section 2.2.2 below.

2.2.1. If Client's first year of maintenance service, as described in this section 2.2, begins on some date other than January 1, DDTI will pro-rate the annual fee to the remainder of the

calendar year so that the subsequent years of maintenance service will all begin on January 1 of each year.

2.2.2. If Client chooses to subscribe to one of DDTI's non-standard software updates, it may be available to Client for an additional license fee. "Non-standard software updates" shall mean third party software products that may provide enhancements to the *iView E911 Edition* software or other DDTI Software beyond updates that DDTI provides as part of its regular maintenance service under this Agreement, for example, third party vendor services in support of reverse E911 service. DDTI shall give Client the opportunity to license such non-standard update software, but Client shall not be obliged to subscribe to any such software. The terms, if different from the terms of this Agreement, and license fee for the non-standard update shall be included in Exhibit B to this Agreement when and if it becomes relevant.

3. Confidentiality and Licensor's Rights.

3.1. DDTI, as Licensor, retains all right, title and interest, including all intellectual property rights, including moral rights, in the DDTI Software and any updates that Client may receive under this Agreement.

3.1.1. The Parties understand and agree that DDTI will be providing to Client confidential business information and trade secrets, including but not limited to DDTI Software and any updates. They further agree that the disclosure of such information and materials would irreparably harm DDTI as the owner of such confidential information and trade secrets. Therefore, Client agrees that during the term of this Agreement and thereafter, Client shall take all steps reasonably necessary to hold in trust and confidence and to protect from disclosure to the public or third parties information or materials of DDTI that are the trade secret or confidential information of DDTI.

3.1.2. In furtherance of the rights of Licensor, Client agrees that it will provide to its employees, only on a need to know basis, access to or use of such confidential or trade secret information and materials of DDTI. It agrees to inform these employees of the confidentiality of and the limited right to use the DDTI Software and any updates and such information and materials and will take appropriate disciplinary actions against employees who breach the provisions regarding confidentiality and protection of intellectual property of DDTI. Client further agrees to cooperate with DDTI in the enforcement of any of its rights that are violated as a result of Client's, Client's employee's or Client's agent's action, or a third party whose violation was enabled by Client or Client's employee or agent.

3.1.3. If the PSAP is to be manned in part by the employees of other political subdivisions or of non-public employers, then Client agrees that it will take measures to inform such personnel of the confidentiality and permitted limited use of the DDTI Software and any updates and to assure such personnel's compliance with the confidentiality terms of this Agreement.

3.1.4. If Client receives a request for disclosure of the confidential information or trade secrets of DDTI pursuant to lawful order, such as discovery requests or court order, Client will give immediate notice to DDTI of such request and the Parties will cooperate to obtain a protective order or other lawful protection against disclosure of such confidential information or trade secret in the public record or otherwise.

4. Warranties

4.1. DDTI represents and warrants that it has the power and authority to enter into and perform its obligations under this Agreement.

4.2. Client represents and warrants that: (a) it has the power and authority to enter into and perform its obligations under this Agreement; (b) Client has the rights in and authority to provide DDTI with the information and access to information and systems that it has provided and provided access to under this Agreement.

4.3. Limited Warranty on Media. DDTI warrants that the diskette(s) and/or compact disc(s) on which the DDTI Software or any update is recorded are free from defects in materials and workmanship under normal use for a period of sixty (60) days from the date of DDTI's delivery of the Software or any updates to Client. DDTI's entire responsibility and Client's exclusive remedy will be replacement of the diskette or compact disc that does not meet DDTI's limited warranty and which Client returns to DDTI within the sixty-day period. DDTI has no responsibility to replace, without charge, any media which are damaged or destroyed by the actions of Client or Client's employees or are returned to DDTI after the sixty-day warranty period.

4.4. Limited Warranty on Software.

4.4.1. Client understands that the performance of the DDTI Software or any updates are in support of an emergency situation depends on numerous factors beyond the reasonable control of DDTI, including but not limited to, the Client's hardware, the use of any third party software by Client or DDTI, the training and proficiency of the individuals using the DDTI Software or any updates in an emergency situation, the telecommunications, radio and data services employed by Client for the E911 system. In addition, failures in data may be confused with software failure, with such data failures affected by factors beyond DDTI's control, including but not limited to, the thoroughness and accuracy of the GIS mapping data, which is dependent on such factors as the accuracy of the GPS positioning by satellite, the time and weather conditions when the GIS data were gathered, and the quality of Client's data inputs into the GIS mapping process. Finally, Client understands that while DDTI cannot warrant the perfect performance of the DDTI Software or any update, it can assure a high level of performance as long as Client's hardware is functioning appropriately, Client's personnel are trained and proficient in the use of the DDTI Software and any updates, and neither Client and its employees nor third parties have tampered with the DDTI Software or any update. DDTI will stand behind the DDTI Software and any update as follows: DDTI warrants that it will correct any material and reproducible errors in the DDTI Software (and any updates) that it provides to Client under this Agreement and that DDTI's responsibility and Client's sole remedy shall be DDTI's correction of such errors without charge to Client, so long as such errors are:

4.4.1.1. Reported in writing to DDTI immediately upon Client's discovery of the errors in a form and with supporting information reasonably requested by DDTI to enable it to verify, diagnose and correct the error and

4.4.1.2. Reported by Client to DDTI within sixty (60) days of the date of DDTI's delivery of such DDTI Software and each update to Client; and

4.4.1.3. Are not the result of Client's or its employee's or other person's using the DDTI Software or any updates for purposes not permitted under this Agreement, tampering with or otherwise attempting to copy, decompile, reverse engineer, or effect some other modification of or use of or extract information from the DDTI Software or any updates that is prohibited by this Agreement and/or by law.

4.4.2. DDTI makes no warranty regarding any third party software that it may have incorporated into the DDTI Software or any updates. However, if reported reproducible errors in the DDTI Software or any updates appear to arise from any third party software, DDTI will cooperate with Client to obtain whatever warranty service or assistance (which

may involve a fee paid by Client to such third-party software provider) that Client requests to have correction made to the software as long as Client observes the obligations in section 4.4.1 above.

4.4.3. If the material and reproducible errors in the DDTI Software or any updates (1) occur after the sixty (60) day warranty period; and/or (2) the errors reasonably appear to be the result of some action by Client, its employees, its agents, or Client's permitted sublicensees or any third person who is not authorized to have access to the Software or any updates and/or who has no other rights to copy, manipulate, modify or any other action under this Agreement; and/or appear to be errors in the software of any third-party software, then DDTI, at its sole discretion, may and for a fee, attempt to correct the errors in the DDTI Software and any updates, subject to whatever additional terms DDTI may propose to Client, and in particular any additional terms to protect against wrongful access to or tampering with the DDTI Software and any updates.

4.4.4. Client agrees that it will make no claims regarding the DDTI Software or any updates (1) that are misleading or make representations about the performance of the DDTI Software or any updates that may generate unreasonable expectations about the DDTI Software and any updates or its legal duty or potential liability to the public; (2) that contain any descriptive claims, warranties, or guarantees, and (3) that infringe or violate any right of DDTI or of any third party or violate the law.

4.4.5. Other than the warranties provided for in this paragraph 4 of this Agreement and License, DDTI EXPRESSLY DISCLAIMS ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OR MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. DDTI DOES NOT WARRANT THAT THE FUNCTIONS CONTAINED IN THE SOFTWARE WILL MEET ALL OF CLIENT'S REQUIREMENTS OR THAT THE OPERATION OF THE SOFTWARE WILL BE UNINTERRUPTED OR ERROR-FREE OR THAT DEFECTS IN THE SOFTWARE WILL BE CORRECTED, EXCEPT AS SET FORTH HEREIN. DDTI FURTHER DOES NOT WARRANT THAT THE USE OF THE SOFTWARE BY CLIENT, CLIENT'S EMPLOYEES, CLIENT'S AGENTS, OR THIRD PARTIES WHO ARE NOT PARTIES TO THIS AGREEMENT WILL BE LAWFUL.

5. Indemnification and Limitations on Liability

5.1. Indemnification

To the extent that the Party to this Agreement is a non-public person or organization, which Party is not prohibited by law from assuming responsibility under this Indemnification section, such Party agrees to indemnify and to hold DDTI, its officers, employees, agents, directors, and shareholders, its successors and assigns harmless from and against any and all claims, actions, proceedings, judgments, losses, liabilities, costs and expenses (including reasonable attorney fees) arising from claims by third parties against DDTI that arise from actions or omission of such Party, including any violation of the property rights or privacy rights of another.

5.1.1. Such Party shall have no authority to enter into any settlement agreement or other contract or covenant that affects, directly or indirectly, or purports to affect in any way the other DDTI's rights or obligations with respect to the disposition of any such claim or any ongoing or future dealings with any third party.

5.2. Under no circumstances shall DDTI be liable for any incidental, special or consequential damages that result from the failure of the DDTI Software and any updates to perform in whole or in part and/or the use, including, but not limited to the improper use of the DDTI Software and any updates even if DDTI has been advised of the possibility of such damages.

- 5.3. Client agrees to hold DDTI harmless with respect to any claims against Client by third parties that involve the alleged failure of the DDTI Software and any updates, unless such claim arises solely from the gross negligence or willful misconduct of DDTI.

6. Term and Termination

- 6.1. Except for the limited warranties contained herein and other provisions that survive the termination of the Agreement and License as they apply to the licensing and delivery of the DDTI Software or any update, DDTI will have met its obligations upon its delivery of the CD containing the DDTI Software or any update to Client and its completion of the one-business day installation session provided with the software's delivery. Client agrees that it will pay DDTI no later than thirty (30) days after DDTI's delivery of the DDTI software and its completion of the one business day of installation assistance.
- 6.2. With respect to the Maintenance Service, this Agreement shall be in effect for an initial term of one (1) year from the date that all signatures and official actions of Client that are necessary for this Agreement to be lawful and effective are completed. The Agreement will automatically renew at the end of the one-year term unless Client gives DDTI notice that it wishes to terminate sixty (60) days before the end of the term. Unless another payment schedule is otherwise agreed to in writing by DDTI, Client's failure to pay timely gives DDTI the right to retrieve and Client agrees to return the DDTI Software or any updates without DDTI liability to Client or any permitted sublicensee.
- 6.3. Except as otherwise provided in this Agreement, a Party may terminate the Agreement for breach of contract or tortious acts or omissions of the other Party with thirty (30) days written notice by the terminating Party to the other Party. Such notice shall state the basis for termination, and, when practicable, the reasonable actions that the other Party can take to cure the circumstances that are the basis for termination. The Parties agree to enter into good faith negotiations of the resolution of circumstances that are the basis for the termination, and the terminating Party shall give the other Party the opportunity to cure the reasons for the termination within the thirty-day notice period or some other reasonable period as agreed to in writing by the Parties. If the other Party cures the reason for termination to the reasonable satisfaction of the terminating Party, then the terminating Party shall refrain from termination, unless both Parties agree to terminate the Agreement. Except where specifically provided, termination of this Agreement shall be without prejudice to any other rights that either Party may have at law or in equity.
- 6.4. The thirty-day notice and opportunity to cure will not apply to a reason for termination that involves an act or omission of the other Party, the continuation of which, if true, is a violation of law or subjects the terminating Party to irreparable harm or liability to another or, in the case of DDTI, threatens the integrity and protection of the rights DDTI holds in its intellectual property. In this event, the terminating Party shall give expeditious written notice of termination to the other Party and the reason for termination and may take whatever actions at law or equity are available to prevent irreparable harm to it.
- 6.5. If this Agreement is terminated for any reason, those provisions which by their nature would survive or otherwise expressly survive the termination will survive termination, including but not limited to, protection of confidential information and warranties. Upon termination for cause by DDTI, any license to Client is terminated.
7. Each Party agrees to give the other all notices required under this Agreement in writing and to deliver notices under this Agreement using a medium appropriate to the urgency of the notice and to the length of time under this Agreement by which the receiving Party must respond to the particular notice. The Parties agree that they will not send notices to each other so that they are likely to be received at times or on days when each should reasonably expect that the receiving Party will not be

present to receive the notice on the same day as it is delivered to the receiving Party. If notice is sent by e-mail, each Party agrees to label the e-mail, for example, indicating the appropriate sender of such notice and using the subject line of the header of the message so that the receiving Party can identify the notice and its urgency without having to open the e-mail message.

Each Party will provide in writing on Exhibit A the name of the contact person who is authorized to receive and timely respond to notice(s) from the other Party.

8. Entire Agreement. This Agreement, including the attached Exhibit(s), contains the entire understanding and agreement of the Parties with respect to the subject matter contained herein, supersedes all prior oral or written understandings and agreements regarding the subject of this Agreement, and may not be altered or amended without the signed written agreement of the duly authorized representative of both Parties.
9. Assignment. Neither Party may assign its rights and obligations under this Agreement to another without written permission from the other Party, which permission shall not be withheld unreasonably.
10. Severability. If any provision(s) of this Agreement is held by a court of competent jurisdiction to be contrary to any law, the Parties agree that the provision found unlawful shall be construed so that it can be found lawful to the full extent possible, the remaining provisions shall remain in full force and effect. If such provision cannot be construed in a fashion that is lawful and is otherwise found void or unenforceable, then the Parties agree that the remaining provisions of the Agreement shall continue in full force and effect as if said void or unenforceable provision never existed and as long as the removal of such void or unenforceable provision does not materially change the balance of rights and obligations of the Parties. If such balance is materially changed, the Parties agree to enter into good faith negotiations of an Agreement to effect their intentions without the severed provision(s).
11. Governing Law. This Agreement is to be interpreted under Ohio law, except for its conflicts of law principles, and under federal law for matters governed by federal law, and all disputes as to this Agreement, if they cannot be resolved by the Parties between themselves, will be brought in a state court in Franklin County, Ohio, or, if appropriate, a federal court located in Franklin County, Ohio, and both Parties agree that they will not contest venue in those courts regarding their disputes.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the dates specified below and they represent that they have the necessary authorization to sign this Agreement:

Digital Data Technologies, Inc.

BY: 

Ronald P. Cramer

ITS: Chairman/Partner

DATE: 10/28/02

The Board of Commissioners of the County of Huntington,
Indiana:

BY: 

BY: 

BY: _____

ATTEST BY: 

DATE: 10-28-02

Exhibit A
SOFTWARE LICENSE AND MAINTENANCE AGREEMENT

iView E911 Edition

Date: October 28, 2002

Parties: DDTI and Huntington County, Indiana

1) Further description of the DDTI Software and hardware provided under this Agreement: there are at least two software programs (Server Software and *iView E911 Edition*) that DDTI provides to Client's PSAP. The first—the Server Software—is installed on a server. DDTI provides Client with a hardware cable that allows Client to capture the ALI signal. This cable passes the signal on to the Client's existing hardware (usually a modem, but sometimes a computer) and also to an additional server where DDTI installs another software component to *iView E911 Edition*. This software obtains the ALI information *via* the COM port (hence the cable) and parses the information and sends it to the Client machines (where *iView E911 Edition* software is running) in a unified format. This Server Software has to be configured to properly parse the incoming ALI based, which is different depending on the telephone company (for example, Verizon's data stream is slightly different from Sprint's).

2) Number and location of Client "seats":

3 * located at 300 Cherry St., Huntington, IN 46750

4 X located at 332 E. State St., Huntington, IN 46750

1 located at 201 N. Jefferson St., Huntington, IN 46750

3) Number and location of Client servers:

1 located at 300 Cherry St., Huntington, IN 46750

1 located at 332 E. State St., Huntington, IN 46750

4) Contacts for each party

For DDTI:

Name: Chris Santer

Address: 956 King Avenue, Columbus, Ohio 43212

Or P.O. Box 1947, Powell, Ohio 43065

Phone: (614) 429-3384

Cellular phone or other emergency number: (614) 226-4187

E-mail: csanter@ddti.net

For Client:

Name: Jim Cadoret

Address: 201 N. Jefferson Street Room 106
Huntington, IN 46750

Phone: (260) 358-4859

Cellular phone or other emergency number: (260) 356-1479

E-mail: james.cadoret@huntington.in.us

- 5) Client will subscribe to Maintenance Service: Yes ☒ No ☐

Payment of Maintenance Service fee is due no later than ten (10) days prior to the first day of service if different from January 1 (the first year of Maintenance Service) or December 15, when Maintenance Service begins on the January 1.

- a) If Client determines to subscribe to non-standard update software that may from time to time be made available under the Maintenance Service, the description of software and terms and conditions of its licensure, if different from the License Agreement and license fee for the software appear on Exhibit B.

- 6) Additional details of service to be provided by DDTI to Client (when applicable): N/A

- 7) A sublicense agreement will be required and signed by DDTI and Client:

Yes _____ No X

Exhibit B
SOFTWARE LICENSE AND MAINTENANCE AGREEMENT
iView E911 Edition
Terms and Conditions and Fees for Non-standard Software Updates
Under Maintenance Service

Date: N/A